

INTERSTATE BRICK

IBLA 80-422

Decided September 17, 1980

Appeal from decision of Wyoming State Office, Bureau of Land Management, holding Uinta Placer Clay Nos. 1 through 10, Buff Clay and Buff Clay Nos. 1 through 13 mining claims abandoned and void.

1. Federal Land Policy and Management Act of 1976: Generally--Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment--Mining Claims: Recordation

Under 43 U.S.C. § 1744(b) (1976) and 43 CFR 3833.1-2 the owner of an unpatented mining claim located prior to Oct. 21, 1976, must have filed a copy of the official record of the notice or certificate of location of the claim with the proper Bureau of Land Management Office on or before Oct. 22, 1979, or the claim will be deemed conclusively to be abandoned and void under 43 U.S.C. § 1744(c) (1976) and 43 CFR 3833.4. Filing the documents in the Utah State Office when they should have been filed in the Wyoming State Office is not sufficient.

APPEARANCES: Harvey P. Cahoon, Vice President, Operations, Interstate Brick, for appellant.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

Harvey P. Cahoon, on behalf of Interstate Brick, appeals from a decision of the Wyoming State Office, Bureau of Land Management (BLM), dated January 18, 1980, declaring Uinta Placer Clay Nos. 1 through 10, Buff Clay and Buff Clay Nos. 1 through 13 mining claims located in

sec. 26, T. 17 N., R. 120 W., sixth principal meridian, Utah, abandoned and void. 1/

BLM's decision reads in pertinent part as follows:

Your notice/certificate of mining claim location identified above is returned together with the filing fee, since it was not filed within the time prescribed, prior to October 22, 1979, as required by Federal Land Policy and Management Act of 1976 (43 U.S.C. 1977) [sic] and the regulations in 43 CFR 3833.1-2(b) (copy enclosed).

The regulations in 43 CFR 3833.4(a) further provide that the failure to file such instruments as are required by sections 3833.1 and 3833.2 within the time periods prescribed therein, shall be deemed conclusively to constitute an abandonment of the mining claim, mill site, or tunnel site and it shall be void.

In its statement of reasons appellant contends that the necessary recordation information was inadvertently filed in the Utah State Office on October 15, 1979, rather than the Wyoming State Office; that the filings were rejected by the Utah State Office because they were filed in the wrong office 2/; that appellant subsequently refiled the information with the Wyoming State Office; that the filing made on October 15, 1979, complied with the intent of the law and the subsequent filing made on January 17, 1980, was to correct a secretarial oversight; that rejection of the filings will cause substantial harm and cause appellant to lose its right to the improved clay properties which it has been working for over 15 years.

[1] Section 314(b), Federal Land Policy and Management Act (FLPMA), 43 U.S.C. § 1744(b) (1976), requires the owner of an unpatented lode or placer mining claim located prior to October 21, 1976, to file a copy of the official record of the notice of location for the claim in the BLM office designated by the Secretary of the Interior within the 3-year period following October 21, 1976. Section 314 also provides that failure to timely file such record shall be deemed conclusively to constitute an abandonment of the mining claim by the owner.

The pertinent regulation, 43 CFR 3833.1-2(a) reads as follows:

[§] 3833.1-2 Manner of recordation -- Federal lands.

1/ We note that in the statement of reasons appellant specifies that it is appealing the BLM's decision in regard to the Uinta Placer claims Nos. 1 through 10, the Buff Clay claims 1 through 6 and 11 through 13.

2/ The rejection of these location notices by the Utah State Office was appealed to this Board and was affirmed by our decision styled Interstate Brick, 49 IBLA 125 (1980).

(a) The owner of an unpatented mining claim, mill site or tunnel site located on or before Oct. 21, 1976, on Federal lands, * * * shall file (file shall mean being received and date stamped by the proper BLM Office) on or before October 22, 1979, in the proper BLM Office, a copy of the official record of the notice or certificate of location of the claim or site filed under state law. If state law does not require the recordation of a notice or certificate of location [of the claim or site, a certificate of location 3/] containing the information in paragraph (c) of this section shall be filed.

The above quoted regulation specifies that "file" shall mean being received and date stamped by the proper BLM office. The "proper BLM office" is defined in the regulations at 43 CFR 3833.0-5(g) as the BLM office which has jurisdiction over the area in which the claim is located, as specified in 43 CFR 1821.2-1(d). The latter section states in turn that the office having jurisdiction over lands located in Wyoming is BLM's Wyoming State Office in Cheyenne. The documents had to be received and date stamped by the Wyoming State Office by October 22, 1979, in order to be filed timely. Interstate Brick, 49 IBLA 125 (1980); Santa Fe Nuclear, Inc., 47 IBLA 220 (1980); C. F. Linn, 45 IBLA 156 (1980). Failure to comply must result in a conclusive finding that the claim has been abandoned and is void.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Anne Poindexter Lewis
Administrative Judge

We concur:

Frederick Fishman
Administrative Judge

Edward W. Stuebing
Administrative Judge

3/ The bracketed language was inadvertently omitted from 43 CFR 3833.1-2(a) upon printing. The correctly promulgated regulation appeared at 44 FR 20430 (Apr. 5, 1979).

